IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 3503 of 2005()

LP.46/2003 of JFCM -I, PERINTHALMANNA.
CRIME NO.1010/2000 OF PERINTHALMANNA POLICE STATION)

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PETITIONER: 2ND ACCUSED

YOUSUF, S/O.MOHAMMED,
VATTATHODI HOUSE,
KATTUKULAM, ALANALLOOR AMSOM DESOM.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,
PERINTHALMANNA, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
(CR.NO.1010/2000 OF THE PERINTHALMANNA POLICE
STATION).

BY P.P. SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN,J

Crl.M.C.No.3503 of 2005

Dated 28th September, 2007.

order

This Crl.M.C. is filed by the 2nd accused in Crime No.1010/2000 of Perinthalmanna police station with a prayer to quash all further proceedings against the petitioner in L.P.No.46/2003 on the file of the Judicial First Class Magistrate-I, Perintalmanna in crime No.1010/2000 of Perinthalmanna police station. The main ground urged by the petitioner to quash the proceedings is that all other accused in the very same crime has been acquitted as per annexure A4 judgment dated 18-12-2004 of the Addl. Sessions Court, Fast Track I, (Ad Hoc), Manjeri in Sessions Case No.148/2002.

2. The prosecution case is that on 15-11-2000, at about 12.30 in the night, due to political enmity towards CW1, the accused persons, 4 in number, in furtherance of their common intention, criminally trespassed in to the land owned by CW1 and set fire to a thatched hut and destroyed rubber saplings thereon and thereby caused damage to the tune of Rs.25,000/- and thus the accused have committed offences punishable under sections 447, 436 and

427 read with section 34 of IPC. After investigation in the above crime No.1010/2000 of Perinthalmanna police station, police has filed final report based upon which the committal court took cognizance and instituted C.P.No.6/2002. Accused Nos. 1, 3 and 4 were appeared before the committal court and accordingly their case has been committed on the basis of which S.C.No.148/2002 was instituted in the court of Addl.Sessions Judge, Fast Track No.I (Ad Hoc), Manjeri. Petitioner submitted that during the pendency of the above Sessions Case, the Government has issued annexure 3 order, on the basis of a petition dated 20-9-2002 by one Mohammed Vattamody and others, stating that the Government has no objection to withdraw the case, with the leave of the court, S.C.148/2002 of the Addl.Sessons Court, Manjeri corresponding to crime No.1010/2000 of Perinthalmanna police station. On the basis of annexure 3 order, the Sessions court as per annexue 4 judgment acquitted all other accused viz., accused Nos.1,3 and 4.

3. I have heard the counsel for the petitioner as well as the Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that in the light of annexure 3 order passed by the Government and annexure 4 judgment of the Sessions Court, there is no meaning in leaving out the petitioner to face the trial and it will be an abuse of process of court and there is no likelihood of successful prosecution and in support of the above contention, the learned counsel pointed out the facts and circumstances involved in the criminal case. On the other hand, the learned Public Prosecutor submitted that annexure 3 order was issued with respect to the accused who faced the trial in S.C.148/2002 and unless there is an order from the Government as that of annexure 3, the Petitioner cannot seek benefit of annexure 3 order. Going by the facts and circumstances involved in the case, it can be seen that the allegation against the petitioner as well as other accused in this case are of serious in nature and as per the materials available on record it cannot be said that no charge will lie against the petitioner. But the learned counsel appearing for the Petitioner argued placing much reliance on annexure 3 that the case against the petitioner can quash especially in the light of the annexure 4

judgment which was pronounced on the basis of annexure 3 government Order. Even if it appears that there is a prima facie good case for the petitioner, it cannot be done in a proceedings under section 482 Cr.P.C. As per section 321 Cr.P.C., it is for the trial court to decide whether prosecution should be allowed to withdraw the case which is pending before it. As disclosed by annexure 3 order even though the Government expressed its no objection in withdrawing S.C.148/2002 with respect to the other accused in crime No.1010/2000, the order itself says that the same can be withdrawn with the leave of the court. As a rule of procedure and law, it is for the prosecution to apply its mind and to approach the concerned court with a petition for permission to withdraw the case and it is for the court to decide upon whether such petition should be allowed or not. Of course, the petitioner has got a good ground for approaching the Government especially in the light of annexure A3 order from the Government. In the light of the above facts and circumstances, I am of the view that the petitioner is not entitled to get the relief sought in the Crl.M.C. But certainly, the petitioner can approach the

Government with a petition for an order like annexure A3, on the basis of which the Government can consider his request and if the Government is of opinion in favour of the Petitioner, a similar order can be passed, on the basis of which the Public Prosecutor can approach the trial court seeking permission to withdraw the case.

In the result, the above Crl.M.C. is dismissed with the above observation.

V.K.Mohanan, Judge.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: